IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(MAIN) No.246 of 2006

Mrs. Surekha Kumbharjuvekar,
major, R/o FS 1,
Dina Housing Complex,
Porvorim, Goa. ... Applicant

versus

1. Mr. Hanumant Kundaikar
2. Dyneshwar Kundaikar
3. Gurudas Kundaikar
4. Sumitra Kundaikar
5. Sunita Kundaikar

All r/o Torda,
Salvador-do-Mundo,
Bardez, Goa.

6. State of Goa
As represented by
Officer-in-charge,
Porvorim, Police Station,
Porvorim, Goa. ... Respondents

Ms. C. Collasso, Advocate for the Applicant.

Mr. C. A. Ferreira, Public Prosecutor for the Respondent No.6.

CORAM : N. A. BRITTO, J.

DATE : 13TH JULY, 2006.

ORAL ORDER

Heard Ms. C. Collasso, the learned Counsel on behalf of the applicant and Mr. C. A. Ferreira, the learned Public Prosecutor on behalf of the respondent no.6.

2. Respondent Nos.1 to 5 have chosen not to contest the proceedings. Earlier, it was stated that they were served on a private notice. Even later upon a notice from this Court, respondent nos.1 to 5 have chosen to remain absent yesterday and today.

3. This application has been filed to quash the proceedings in C.C.No.61/S/2000/C which were filed by the State upon the first information given by the applicant, against respondent nos.1 to 5, as accused, under Section 498-A r/w 34 I.P.C.

4. It appears that the applicant is a Clerk working in this Court at Panaji and she was married to respondent no.1 on 21-8-1990 and of the said marriage they have a son born to them

on 2-10-1991 and after the said marriage the applicant and respondent no.1 lived in a joint family, consisting of 15 members.

5. Further, it appears that the marriage between the applicant and respondent no.1 did not go on very well and on or about 5-11-1999 the applicant filed a complaint to the Police against the respondent no.1, her husband and respondent nos.2 and 3, her brothers-in-law and respondent nos.4 and 5 being their respective wives. The case was investigated by the Police and a charge-sheet was filed and the trial of the case is in progress. The applicant has been examined in the said case.

6. The respondent no.1 filed a suit for divorce, being Matrimonial Petition No.80/1999/B in the Court of the learned Civil Judge, Senior Division, Mapusa and the same was decreed by Judgment/Decree dated 14-7-2003. It appears that the applicant has filed an appeal against the same which is pending before this Court, being First Appeal No.179/2002. The applicant also sought custody of their son Sujan Kundaikar in

C.M.A.No.75/99/SR/I. It appears that the applicant was granted visiting rights, as respondent no.1 was not willing to hand over the custody of the minor child to the applicant. The applicant thereafter has withdrawn the said C.M.A. No.75/99/SR/I. During the course of the trial of C.C. No.61/S/2000/C under Section 498-A r/w 34 I.P.C., the applicant filed an application for compounding the offences. The said application was filed unilaterally by the applicant without the consent of the respondent nos.1 to 5. The said application came to be rejected by Order dated 24-2-2006 of the learned J.M.F.C., Mapusa by which the learned J.M.F.C. held that the offences under Section 498-A r/w 34 I.P.C. were not compoundable.

7. Admittedly, an offence under Section 498-A has been made non compoundable and cannot be compounded by virtue of Section 320 Cr.P.C. However, it does appear that the next remedy is provided by the next Section of the Cr.P.C. i.e. Section 321 of the Code which gives powers to the Public Prosecutor to withdraw the cases.

8. The Apex Court, it appears has provided another remedy and that is by way of quashing the proceedings, in appropriate cases, as reported in the case of **B.S.Joshi and others** v. **State of Haryana and another**(AIR 2003 SC 1386).

9. The applicant has stated that she wishes to put an end to her past, behind her and wishes to start a life afresh. The applicant has stated that she is ready and willing to withdraw the First Appeal No. 179/2002 filed before this Court and on behalf of the applicant it is submitted that a M.C.A. bearing No.404/2006 has already been filed for withdrawal of the said appeal. On behalf of the applicant, it is also submitted that if required, the applicant is ready and willing to give an undertaking before this Court that the said First Appeal No.179/2002 would be withdrawn. The applicant is required to file such an undertaking before this Court within a period of three days.

10. The applicant has further stated that she wants to put the entire past behind her and start life afresh without any acrimony, anger and/or bitterness towards respondent no.1. She

has further stated that she wants to forget the past, and does not wish to revive the past. It is, therefore, submitted on her behalf, by her learned Counsel Ms. Collasso that the proceedings in C.C.No.61/S/2000/C be quashed to enable the applicant to live life afresh and to this the learned Public Prosecutor Mr. Ferreira appearing on behalf of the respondent no.6 has no objection.

11. The Apex Court in the case of **B. S. Joshi and others** v. **State of Haryana and another** (supra) has referred to other cases decided by that Court and has observed that in matrimonial matters it becomes the duty of the Court to encourage genuine settlements of matrimonial disputes. The Supreme Court has also observed that sometimes little matrimonial skirmishes often assume serious proportions resulting in commission of heinous crimes in which the elders of the family are also involved with a result that those who could have counselled and brought about re-approachment are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate

their disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their "cases" in different Courts.

12. The Supreme Court further observed that there is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of I.P.C. The Supreme Court, therefore, held that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or

complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.

13. The applicant is stated to be 37 years of age which shows that she has a future to live. As stated in the application, she has chosen to draw the curtain on her bitterness past, after her marriage to respondent no.1. It appears that respondent no.1, her husband as well as respondent nos.2 to 5 have also no objection, since if they had any, they would have appeared and contested the proceedings. The State has also shown its magnanimity in not opposing the application, though the State, if a proper application was made by the applicant, could have considered the withdrawal of the said criminal case by virtue of the powers given to the Public Prosecutor under Section 321 of the Code. Since there is none in the way of the applicant, as she resolves to live a new life, it would be in the interest of justice that the Court also does not come inbetween.

14. Consequently, the application deserves to succeed. The FIR filed by the applicant dated 6-12-1999/CR.No.120/99 at the Porvorim Police Station along with further proceedings

which have taken place pursuant to the said FIR in C.C. No.61/S/2000/C (State v. Hanumant Kundaikar and others) are hereby quashed and set aside. Consequently, the accused/respondent nos.1 to 5 shall stand acquitted under Section 498-A r/w 34 I.P.C.

N. A. BRITTO, J.

RD